



DEFENSE FINANCE AND ACCOUNTING SERVICE
1931 JEFFERSON DAVIS HIGHWAY
ARLINGTON, VA 22240-5291

001 25 1995

DFAS-HQ/F

MEMORANDUM FOR DIRECTOR, DEFENSE FINANCE AND ACCOUNTING SERVICE
- CLEVELAND CENTER
DIRECTOR, DEFENSE FINANCE AND ACCOUNTING SERVICE
- DENVER CENTER

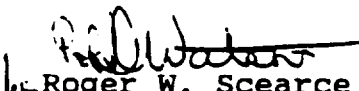
SUBJECT: Department of Defense Financial Management Regulation
Volume 7, Part B (DoDFMR Vol 7B), Conflict of Interest
Temporary and Permanent Repeals. (DFAS Item Number
E-14)

This is an Interim Change Number R12 - 95 to the DoDFMR,
Volume 7B. This change is effective immediately.

We have evaluated your comments on the draft change to the
DoDFMR, Volume 7B. The attached final version of the change
includes your comments where appropriate. Assignment of an
interim change number is your authority to initiate a procedural
modification to facilitate this change.

We have determined that this policy change does not require
a change to the current pay system. For the Denver Center, use
the attached to initiate the formal printed change to the DoDFMR.

Our point of contact, Mr. Fiti Malufau, may be contacted at
DSN 327-6051 or Commercial (703) 607-6051. Our Fax number is DSN
332-5271 or Commercial: (703) 602-5271.


Roger W. Searce
Brigadier General, USA
Deputy Director for Finance

Attachment:
As stated

cc: ASD (FMP)
DGC (F)
DFAS-DE/DG
DFAS-IN
DFAS-KC/FSP
Service Liaisons
USCG/NOAA PHS Liaisons

DFAS ITEM No.E-14
DoDFMR Interim Change No. R/2-95

1. Delete Part 2, Chapter 1, Section A, paragraph 20102 and renumber subsequent paragraphs accordingly.

2 Change Part 2, Chapter 1, Section D to read:

**"SECTION D
CONFLICT OF INTEREST**

20131. General

a. Conflict of interest statutes are intended to safeguard the integrity of public administration and prevent Government officials from using their positions and influence for personal gain.

b. The conflict of interest statutes applicable in general to those whose Government service has ended accomplish these purposes by:

(1) Imposing limitation in some cases upon the employment of former DoD procurement personnel by defense contractors;

(2) Requiring the employment of such personnel by defense contractors in other instances be reported; and

(3) Restricting the activities of former DoD officers and employees in representing or assisting their employers in claims-related matters or becoming personally involved in the process of "selling" to the Government.

c. A comprehensive digest of laws, including conflict of interest laws applicable to retired military personnel, is set forth in DoD 5500.7-R, chapters 5 and 9, and Appendix A.

d. Although violation of conflict of interest laws may result in the imposition of criminal penalties (including fines and imprisonment) or administrative fines and sanctions, entitlement to military retired pay is directly affected only when:

(1) a retired Regular officer is convicted of violating 18 U.S.C. 281(a) during any time other than the period 13 Oct 1994 through 31 Dec 1996, or

(2) any member is convicted of violating the Hiss Act

(5 U.S.C. 8311-8322).

e. Fines levied for convictions under other statutes may result in debts to the United States that may be collected in accordance with Part 6, chapter 2; they do not, however, affect a convicted member's entitlement to receive retired pay.

20132. Selling

a. "Selling", as an activity under the conflict of interest law, is prohibited during any time other than the period 13 Oct 1994, through 31 Dec 1996, under 18 U.S.C. 281(a). A retired Regular officer may not, during the 2-year period following retirement, represent any person in the sale of anything to the department in which the officer holds retired status. This statute has been interpreted by the Department of Justice as prohibiting retired Regular officers from representing any party other than themselves in connection with a contract for the sale of services or the sale of supplies. Since an officer is disqualified from holding a position of honor, trust, or profit under the United States as a result of conviction, entitlement to retired pay ceases.

b. The prohibition against selling has been broadly interpreted to include virtually all activities involved in the selling process and to apply in any case reasonably within the scope of the statute where the conduct at which it was directed could arise.

c. The following activities are examples of conduct by retired Regular officers that might be interpreted as selling.

(1) Contacting military installations or consulting with DoD officials to obtain information on current or projected military needs and suggesting new lines of potential product development to member's employer.

(2) Attending precontract negotiations or preproposal conferences with other members of the employer's firm.

(3) Making contacts to promote goodwill that directly or indirectly may result in sales to Uniformed Services agencies or their nonappropriated fund instrumentalities.

(4) Giving demonstrations and explaining products with a view toward an eventual sale on behalf of an employer.

(5) Making contacts at social functions sponsored by the employer with Uniformed Services personnel who are in positions to influence procurement.

(6) Making calls at installations to render technical assistance, update catalog materials, or provide information on companies represented.

(7) Contacting procurement and budget personnel on behalf of the employer to discuss general trends in the military environment.

(8) Conducting promotional seminars on supplies or products already sold by the employer to DoD.

d. Whether the retired officer acted in good faith, was ignorant of the law, or will experience financial hardship, has no effect upon the requirement to withhold retired pay for the period of statutory violation.

e. See Table 2-1-7 for synopsis of Comptroller General decisions as they relate to conflict of interest statutes.

3. Paragraph 20133, delete in its entirety and renumber 20134 as 20133 and revise to read:

20133. Withholding Retired Pay.

Retired pay may be withheld when the employment falls under the category of activities prohibited under conflict of interest laws.

4. Revise the Bibliography for Section A - Reporting Requirements:

Paragraph	Citation
20102	Public Law 99-145, 8 Nov 1985
20102e	Public Law 99-121, 19 Nov 1969 DoDD 7700.15, 30 Oct 1970
20103d	5 U.S.C. 5532
Table 2-1-5, Notes 4&5	Public Law 97-253, 8 Sep 1980

3. Revise the Bibliography for Section D - Conflict of Interest to read:

Paragraph	Citation
20132a	Ltr, Dept of Justice, 30 Nov 1981 Public Law 100-180, 6 Dec 1987 Public Law 103-335, Sec 5001 13 Oct 1994
20132b	39 Comp Gen 366 Public Law 100-180, 6 Dec 1987
20132c(1)	40 Comp Gen 511
20132c(2) & (3)	MS Comp Gen B-181056, 10 Feb 1975
20132c(4)	Seastrom vs U.S. 147 Court of Claims

	453, 1959
20132c(5)	56 Comp Gen 898
20132c(6)	53 Comp Gen 616
20132c(7)	43 Comp Gen 408
20132c(8)	MS Comp Gen B-203079, 22 Mar 1982
20132d	41 Comp Gen 642, 646
	MS Comp Gen B-198751, 19 Feb 1981

***Note: Delete all bibliography referencing paragraph 20133.**